MEREWETHER
ADDRESS TO THE KING
1830

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AN ADDRESS

TO

THE KING,

THE LORDS, AND COMMONS,

&c.

LATELY PUBLISHED,

BY THE SAME AUTHOR.

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AN

ADDRESS

TO

THE KING,

THE LORDS, AND COMMONS,

ON THE

REPRESENTATIVE CONSTITUTION

OF ENGLAND.

BY H. A. MEREWETHER, ESQ.,

SERJEANT AT LAW.

"Nolumus leges Angliæ mutari."

LONDON:

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AN ADDRESS,

&c. &c.

TO THE KING.

I VENTURE to approach your Majesty with that deep-felt respect, which is due from a free subject to the patriot King of a free people; but at the same time, with that confidence which may be assumed by one who, with a view to offer his bounden aid towards the public good, addresses his Sovereign on the laws of the land—a subject most dear to your Majesty, and to the people of the most vital importance.

The introduction of new principles, or the needless recurrence to old doctrines when not called for by necessity, may engage the attention of the theorist, or amuse the antiquarian; but forms no useful object of enquiry for the governor or the governed. The perfection of prac-

tical Government must be their mutual aim: and is the subject to which the humble individual who addresses your Majesty presumes to call your attention.

Your Majesty is too well acquainted with the principles of government, to be reminded that the chief power of the state exists in the Legislative Body: in those who have the faculty of enacting and annulling laws. To the constituent elements of the assembly in which that power is vested, the governed must ever look with the deepest anxiety; nor can any subject be of greater importance to them, than the consideration of that power which makes the laws for the rule of their conduct, and the protection of their liberties, their lives, and their property.

Your Majesty, centering in yourself the whole Executive power of the State, is the fountain-head from whence the Legislature springs—the person to whom that power reverts for sanction. The commencement and conclusion of whose functions —their summons—the last confirmation of their acts—and their dissolution—are all vested in you.

The hereditary Nobility of the land, and those whom your Majesty may please to call to that high station, form the next fixed and permanent portion of the Legislative Body; these are subject, comparatively speaking, to little change; and a better mode of embodying the experi-

ence of the higher classes of the community, in the Legislative Power of the State, could not probably be devised than the constitution of the House of Peers.

The remaining portion of the legislative power has been, by the wisdom and progressive experience of our ancestors, vested in the Commons, who being elected from time to time as they are called together, are the only changing body in the Legislature. The constitution and conduct of that House, as the more immediate representatives of the people, must ever be regarded by them with the most anxious attention.

Abuses, extensive and important, have crept into the sources from which this body is constituted, till the most striking anomalies and absurdities have become apparently a part of that system, which, if continued in its purity, would have been the admiration of the world for its simplicity ; but, disfigured by usurpations, has become the theme of complaint amongst your Majesty's subjects, and our opprobrium amongst the neighbouring nations, and is rendered so confused and intricate, that the powers of the human mind are unequal to comprehend or unravel it.

Slight deficiencies or speculative complaints might not be fit to be obtruded on your Majesty; but where there are defects so extensive, in a matter so important, an effort to simplify the compli-

cated mystery of the present usages, and reduce the whole to a plain intelligible shape, for the purpose of practical reformation, is an attempt which, it is hoped, may be excused.

A doubt may be suggested, whether, on the subject of Parliamentary Reform, an appeal should be made to your Majesty; but circumstances not originating with yourself, nor under your control, have made you, Sire, the principal arbitrator on this occasion, and your Majesty's prerogatives the means of correcting the existing evils.

In the early periods of our history, our ancestors entertained an irritable jealousy of the powers of the Crown, which, from the patriotic moderation of the House of Hanover, has long since passed away; and the Commons House of Parliament, in confident reliance on the forbearance of the Crown, has of late years in many instances founded their determinations of the rights of Parliamentary Election, on the construction of Charters granted by your Majesty's progenitors.

The first summons to Parliament in the reign of Edward I. was to *every* City and to *every* Borough; and the returns were made by those whom the common law defined as Citizens and Burgesses.

In the reign of James I. it was declared, by a Committee of the House of Commons, formed of some of the ablest men that ever adorned any

nation, and some of the greatest lawyers and antiquaries who have lived in this; that the King's Charter could not alter or control the right of Parliamentary Election; a principle so evidently necessary, for preserving the due balance of the Constitution, that it does not require an authority to support it. However, notwithstanding these objections, both of authority and principle, the House of Commons have repeatedly decided, that the right of election is in Corporators, created by the Charters of the Crown.

It is clear in reason, that the Charter of the Crown ought not to affect the right of Parliamentary Election; nor did the Sovereigns of this country intend to do more by their grants than confirm that privilege, where it had been previously enjoyed; the right of the Crown to give the elective franchise by its Charter, was elaborately discussed in the reign of Charles II. in 1676, with respect to the town of Newark; and was reluctantly assented to in that case, with an understanding that it should never again be exercised. In point of fact, it never has been.—Yet the Committees of the House have determined, in many instances, that the right of election belongs to those individuals who are incorporated by Royal Charters.

The consequence of which is, that should any corporation now become dissolved, and your Ma-

jesty should be pleased to grant a new Charter, your grantees would exercise the right of election.

There is no doubt your Majesty would, like your immediate predecessors, re-grant that right to those who had exercised it before, as was done under sound and constitutional advice, during the reigns of your illustrious Family, in the cases of Tiverton in 1724, Helstone in 1773, and some others.

But the present usurpations arise out of the abuse of more ancient Charters granted by your royal predecessors, and the only probable and effectual remedy that now exists, is to be looked for in the due exercise of your Majesty's undoubted prerogatives.

The evils which prevail are of great and dangerous importance.

On the one hand, Charters intended for the benefit of the whole body of the inhabitants of large and populous towns, have by usurpation, and for the purpose of Parliamentary influence, been restricted to the enjoyment of a few. In one instance a Charter of Incorporation of the inhabitants, where there is a population of 60,000, has been construed and applied, as limiting the corporation to twenty or thirty, the majority of whom are non-resident. In other instances incorporations equally general, have been reduced to the numbers of ten, eight, six,

and even one. And many are to be found where, although the incorporations are of Mayor, capital Burgesses, and Commonalties, the general body of the Commonalty has been altogether suppressed, and no such class is admitted to have any existence, though expressly required by the Charter.

On the other hand, in many instances the Charters intended for the local benefit of the places to which they have been granted, have been construed to apply to persons not resident in them, and in numerous cases the non-residents have doubled and trebled the residents; in effect neutralising all the privileges of the inhabitants.

An unlimited power also of admitting persons into the corporations has been assumed and extensively exercised; many hundreds having, upon the mere will of the corporators and without any previous qualifications, been added to their numbers—a power most obviously capable of the greatest abuse, as by it the same individual might be made a Burgess of half the Boroughs in England; or the whole population of any one of the largest towns might be made corporators of any Borough possessing such a power, however distant from the actual residences of the adopted population.

From the combined effects of these abuses, the municipal governments of cities and boroughs, (for which purpose they were chiefly instituted, and have since been endowed with successive

privileges,) have, by the reduction of the number of Burgesses, and the description of the persons elected, been brought into merited disgrace, and the local administration of the law into contempt. Whilst, on the other hand, where the elective franchise has been kept distinct from the Corporation, the law has been duly administered, the municipal authority upheld, and the local magistracy deservedly respected.

In others, interference of non-residents has justly raised the indignation of the real inhabitants, and the indiscriminate admission of honorary Freemen for party purposes has made these privileges dangerous means of political influence.

For these mischiefs, the only prompt remedy will be in the exercise of your Majesty's prerogative, through the intervention of your legal responsible officers:—A remedy expressly referred to by Lord Chief Justice Ryder, as the corrective of any evil which might result from the decision of the House of Lords, in the case in which he was giving judgment; and the learned Judge describes it as a power entirely discretionary in your Majesty's hands.

The other ordinary remedies have either altogether failed, or are so expensive and precarious that they are inaccessible to any but the richest, and not to be resorted to without a disregard of common prudence.

If the number of Burgesses is undefined, should

they be reduced to the smallest possible number, the Courts will not interfere to compel their increase, and the abuse continues uncorrected.

The Courts cannot *remove* the non-residents, because it has been decided that the remedy of *quo warranto* will not lie against a corporator for non-residence, until he is removed by the corporation. Nor will they grant a *mandamus* to remove them, but leave it to the discretion of the corporators themselves; the result of which cannot but be anticipated, when it turns upon the removal of non-residents by non-residents; an event too improbable even for the most sanguine to expect.

And should such a general admission of the numerous inhabitants of a distant place, before referred to, be adopted for any political purpose, there appears at present no legal means in practice of opposing it.

Thus may an incorporation of inhabitants in a populous town be reduced with impunity to ten or twenty; or with equal impunity be extended to the utmost number; and the whole of such a body, though by the most express and strongest words of a Charter required to be inhabitants, in defiance of such provisions may be non-residents, and even out of the kingdom, without the evil being capable of correction by the law.

Under these circumstances an appeal to your Majesty becomes imperatively necessary.

By the old law, now unfortunately fallen into disuse, the legal officers of the Crown could interpose for the repeal of Charters thus abused; and this is the remedy which, with the concurrence of Parliament, I humbly suggest to your Majesty should now be resorted to, to correct abuses so extensive—so injurious—so dangerous—and, unless this course is adopted, without remedy.

Your Majesty's present legal advisers cannot but be informed of these facts, and must necessarily be alive to them; but after the abstinence of their predecessors for many years, it can hardly be expected that they should themselves on their own suggestion adopt a proceeding now so unusual.

But should your Majesty, considering your own dignity, your high and sacred prerogatives, the important interests of your subjects, and the purity of Parliament, think such an interposition not only justifiable but necessary, may I with humility suggest how acceptable to your Majesty's people would be a gracious message to the Commons House of Parliament founded upon these abuses, and expressing your Majesty's anxiety to co-operate with the Commons in promoting their removal by the interposition of the officers of the Crown, or in such other manner as on

further consideration should be found most expedient.

By these means not only would your Majesty's faithful Commons be encouraged in repressing these great evils, but your Majesty's law officers would also be emboldened in the due discharge of their duty; and probably those who at present promote these abuses would timely abstain from their continuance, when they find your Majesty prepared to say, in the language of one of your royal predecessors, referring to the abuse of her grants; "that as to the royal Charters being "made grievances to your people, and oppressions "to be privileged under the colour of those pa- "tents, is what your princely dignity will not "suffer."

Trusting that the motive will excuse this attempt, I beg your Majesty's permission to subscribe myself, with all humility,

One of your Majesty's

Most devoted and faithful subjects,

Henry Alworth Merewether.

Nov. 22*nd*, 1830.

TO THE RIGHT HONOURABLE

THE

LORDS SPIRITUAL AND TEMPORAL.

To you, the immediate Counsellors of the King, the Court of last resort, the permanent and dignified advisers of the state, at a period like the present, when all seem covetous of change, without due consideration of that which is intended to be changed, I confidently appeal for a temperate retrospect of the past, and a prudent consideration of the future.

The evils existing in the representative part of our Legislature are felt to require amendment. It is but the dictate of truth to say that at least some of those evils are to be attributed to inadvertent decisions of your Lordships' House.

The continuance of the present generally prevalent abuse of non-resident Burgesses and Freemen,

so revolting to the inhabitants of the places to which they pretend to belong, so ruinously expensive to candidates, and so generally demoralizing to the voters themselves, is mainly to be attributed to the decision of your Lordships' predecessors in the Newtown Case in the year 1755, in which, by confounding absence with non-residence, it was determined that a *quo warranto* would not lie against a freeman for the latter, unless he was previously removed by the corporation. Upon which authority the subsequent decision of the King v. Heaven in the Bedford case was founded, and from which time to the present moment that doctrine has been so acted upon, that non-resident Freemen and Burgesses have become almost general throughout the kingdom. And as the greater portion of the corporators themselves are non-resident, it is desperate to expect that such persons should remove others similarly situated.

On these grounds this great evil remains without remedy; and should the subject again come before your Lordships, it would surely be desirable to re-consider the principles upon which a case so productive of evil has been founded.

In delivering the judgment, the learned Chief Justice of that day seems to have erred in assuming, in the commencement, that a Burgess was an *officer;* an assumption wholly gratuitous, contra-

dicted by the history of the law with respect to Burgesses, and met by express decisions to the contrary.

His Lordship said, (and his words have ever since been quoted as the leading dictum upon this point), "that non-residence was not an imme-"diate forfeiture, from reasons which set the "matter in a very plain light." The first reason was, that the office of a Burgess was a freehold. The answer to which has been already given—that it is no office at all.

Again, the Chief Justice quotes the passage of Magna Charta, that no non-freeman shall be disseized of his liberties, except by the judgment of his peers; but how is a man disseized of his liberties, who ceases to reside in the place where he is to enjoy them, and who, going away, by his own act abandons them?

The Judge further adds, that "there being a "power of amotion, it ought to be exercised." But suppose it is not. Those who do not exercise that power can only be punished or compelled to act, when they can be *proved* to have been influenced by corrupt motives;—and if they cannot be *compelled* to amove, the probability is, that non-residents will not remove non-residents; and from experience, we know that they are not removed. And although the learned Judge assumed that if a complaint was made to the corporation, and they should refuse to

act, a mandatory writ might be issued to them to compel them to amove; this proposed remedy for the evil he anticipated has since failed, because the Court of King's Bench has decided that a *mandamus* shall not be granted for such a purpose.

The Learned Judge then stated that "there "was another reason which put an end to all "question on the point," which was the impossibility of ascertaining when forfeiture by non-residence would begin; and asked whether absence for one, two, or three, or more days, or occasional absence at a watering-place, would effect the forfeiture.

Strange indeed that this learned Judge, in your Lordships' House, giving judgment upon a question of the utmost importance, should confound two things so essentially different as absence and non-residence!

The former, consistent with continued residence within the place, justified on all occasions by the necessity which creates it, usually terminating when the necessity ceases, temporary and occasional in its nature, and never affording even a ground for amotion, unless it is productive of an actual mischief.

The other pre-supposing a change of residence, a transfer of the domicile, a settlement elsewhere, an abandonment of the place. Surely the latter

cannot be described as non-usor of the office, and an absence producing non-exercise of it; but it is the transfer of an individual from one place to another, leaving behind the duties and privileges to which he was there bound and entitled, and seeking in the new place of his residence, performance and enjoyment of fresh obligations and advantages.

That this learned individual should have stated himself to be unable to define non-residence, may reasonably produce surprise; for numerous are the instances upon which the law is administered solely with reference to the question of residence.

The duties of clergymen, magistrates, constables, overseers of the poor, that awfully important question the settlement of the poor, founded on our earliest institutions, all are to be referred to the question of residence; and perhaps, as may reasonably be expected, no questions so constantly occur in our courts as those founded on the local residence of claimants and defendants, of accusers and accused, witnesses, jurors, and the judges, and of all who are connected with the general administration of the law.

The same Chief Justice appeared to think that there was some difficulty in considering that non-residence should work a forfeiture; but what can be more reasonable than that a person who ceases to live in a place, and goes to reside elsewhere,

should be treated as having abandoned the rights and privileges he there enjoyed, when he has the opportunity of acquiring others in the place of his newly adopted residence?

In truth there is no legal difficulty upon this point; for many are the cases in which the rights of individuals are, by the operation of law, altered and transferred by change of residence. And in a late case in which a question arose divested of all Borough or Corporation interest, it was decided that a mere departure from the place, actually put an end to an office which a person possessed under an act of Parliament, in no degree stronger in its language than the Charters with respect to which contrary decisions have been frequently made by the Courts.

But with respect to Borough rights, and Corporate questions, there has always been a species of mystery—an assumption of peculiarity—an effort to support that which has long continued, which it would be an almost culpable forbearance not to say, has apparently warped even the judgments of your Honourable House; and seem to have given a bias to the minds of the dispensers of the Law, leading them to conclusions from which their learning and ability could not but have otherwise secured them.

Hence it is that on questions of this description, by the assumption of facts which do not

exist and which are contrary to history, and by the adoption of principles inconsistent with legal analogies, a series of unfounded, subtle, and intricate decisions have been arrived at on this head of our law, which has made it more mystical than even the nice distinctions adopted in the later ages of the Roman Empire—than even the canonical sophisms, or the most complicated system of law which human ingenuity ever produced.

In the latter part of the judgment in the case before alluded to, the Chief Justice, to excuse withholding the relief prayed in that particular instance, suggests a variety of other remedies, to which the direct and practical answer is, that they have been since attempted, they have failed, and the evil remains uncorrected.

His Lordship said, that if the Corporation behaved corruptly, they might be punished : but he adds, as was necessary, the proviso, "if there was "sufficient evidence to prove it." The difficulty of proving corrupt motives is practically well known, and it is obvious that the public may sustain much injury before corruption can be brought home to the offenders. The best answer to this hypothetical reasoning is, that such a remedy has rarely been resorted to, and more rarely successful; and the observation recurs again, the evils exist and are uncorrected.

The Chief Justice in conclusion said, that if

there is gross misconduct, the King may seize the franchise into his hands; in a variety of instances, there has been and is now existing the grossest misconduct, and the most flagrant abuse of the Charters, and for more than a century this remedy has not been adopted.

Another case has lately been before your dignified Tribunal, respecting Galway in Ireland, in which your Lordships had to consider the right of the non-residents.

If one unvarying object of the law could lead to a simple construction of it; if an unvarying series of statutes could make a subject clear; if the express and avowed intention of numerous Charters, both general and particular, and rules and regulations, made by the authority of the Government in Ireland, could make the subject plain, surely this is one without the smallest particle of doubt.

The Charter of Richard II. reciting that Galway and the Burgesses and others dwelling therein were exposed to the danger of enemies,—that King, in order that merchants and others might be the more *induced and encouraged to dwell and inhabit there*, granted to the town amongst other things, that "no merchant or other person "whatsoever, whether foreign or native, who should "not be *continually resident within the town*, and "sworn, as a fellow Burgess of the same, to sup-

" port and sustain from time to time all burdens " in the said town as the said Burgesses do, " should from thenceforth buy or sell in the " Town, except only in gross"—terms which I should conceive could not be mistaken.

The Irish Statute of the Tenth of Henry VII. directs that "the Freemen in all great towns " ought to be chosen from persons prenticed or " *continually inhabiting in the said towns*." Lord Chief Justice Downes stated, that " this language " was plain and intelligible ;"—can it be doubted ? and this enactment is enforced with severe penalties.

The Irish Act of Settlement of the Fourteenth and Fifteenth Charles II., amended by the Act of explanation of the Seventeenth and Eighteenth of the same reign, authorised the Lord-lieutenant and Council, to make regulations for cities and corporations.

Another Statute also of the Fourteenth and Fifteenth of Charles II. provided, that " any trader," &c., who should come into any City, Borough, or Corporate town, with intent *to reside* there, should, on request and payment of Twenty Shillings by way of fine, &c., be admitted a Freeman.

Rules made for the regulation of Galway in the year 1672, in pursuance of the Statute of Charles II., adopting the words above stated,

declared that those who came *to reside* within the place, should be admitted upon payment of a fine; and penalties are inflicted upon the refusal to admit such persons; the individual refused being authorised to take the necessary oath before a Justice of the Peace, and thereupon to be a Freeman.

In these general provisions for the admission of all residents, and for the clear exclusion of all non-residents, the Charter of Twenty-ninth Charles II. made no alteration.

The act of the Fourth of George I. for the better regulation of Galway provides, for the *encouragement of persons to inhabit in the town,* that no person should be elected into any of the offices, who was not at the time *an inhabitant* within it and previously *resident a whole year.* And all traders coming *to reside* in the town were declared to be free of it. And were so to continue as long as they should *inhabit* or *dwell there and no longer.*

The Newtown Act of the Twenty-first of George II., securing the rights of non-residents, clearly did not apply to the town of Galway.

Such was the constitution of Galway as established by law; and it would seem impossible that a doubt could be entertained, but that the non-residents were excluded; for, as was ob-

served by Lord C. J. Downes, there is no difference between the plain construction of the Statute of Henry VII., and the terms on which towns were originally incorporated, namely, *to benefit the inhabitants of the incorporated district.* And it might be added, that there is in fact no essential difference between any of the Statutes or Charters, but they have all the same uniform object, the same language, and the same intention.

His Lordship also, in answer to the common fallacious ground, that the right of non-residence could be supported by usage, spoke with the irresistible influence of truth, that "USAGE *could* "*not vary a Statute which was plain and intelligible;*" and it may be safely affirmed, that a more sound, correct, and convincing judgment never was uttered from the Bench than the one pronounced by that learned Judge on that occasion.

And yet in your Lordships' House it has been decided, that the non-residents may exercise the rights and privileges of Freemen of Galway.

Again, in the later case of Wycomb, (the King and Westwood,) by the decision of your Lordships' House, the Charters and incorporation of that Town, which were evidently intended, in the language of Lord Downes, "*to benefit the inhabitants* "*of the place,*" are in effect now limited to the advantage of the few who compose the select body

of the Corporation to the exclusion of the inhabitants at large, much to their dissatisfaction and injury; and I venture to affirm, that your Lordships' opinion has been founded upon a case which is no authority in our law; I mean the case of Corporations, in Coke's Reports, which is only an extra-judicial opinion, given by the Judges to the Council, and therefore no authority. —It is extra-judicial, and it is entitled to no weight on account of the ground upon which it is founded. It unjustifiably adopts the recital of the Statute of Henry VI. with respect to the Election for Counties, as the basis of the determination on which the decision as to the Elections in Corporations depends, with which the Statute has no connexion: and the application of the one to the other is altogether gratuitous and unauthorised. Besides which the decision is contrary to reason and the principles and analogies of our law. For if the King creates a Corporation of Mayor, Aldermen and Burgesses, and gives them, either an express power to make Bye-Laws, or they have an implied one, they cannot in reason or principle restrain that power to any smaller number, in such a manner as to bind their successors, for that would be to alter the Constitution, express or implied, which the Crown had given them.

The existing Burgesses may at any time delegate their powers to any smaller portion of the general body, who are to act for them on any particular occasion; because this is no more than is indirectly done by any individual who absents himself from any meeting in which any corporate act is done: but they cannot delegate their powers so as to bind their successors.

That case therefore being no authority; but founded on illegal assumption, and contrary to reason and principle; your Lordships' decision resting upon it is not maintainable.

In addition to which, your Lordships cannot but have felt, as well as the Learned individuals who delivered their opinions before you, that the reasonings upon which the judgments were founded, are from the nature of the subject so technical, so involved in legal subtleties, and so mixed up with the mysteries of Corporation Law, that they can hardly be intelligible to your Lordships, and to the public must be totally incomprehensible.

To your Lordships, whose predecessors were unwilling that the subtleties of the Civil Law should be introduced into our simple institutions, who were unwilling that our laws should be changed, and whose usual practice and struggle it ever was, to remove from time to time the intricacies which technical rules will always have a tendency to introduce, it must be unnecessary to

say, how essentially requisite for all practical purposes, and how much it is interwoven with the very object and intention of law, that it should be plain, clear, and intelligible, and readily understood by the people.

That these decisions run counter to this desirable result, cannot I think with submission to your Lordships be doubted. That your Lordships have the power to remedy them for the future, cannot be questioned. That your Lordships will have the inclination and disposition to do so, need not I hope be urged.

It may be conceived that I have addressed your Lordships on subjects too technical: but your Lordships are Judges in the Court of dernier resort in our law; and are assumed by the Constitution to be acquainted with these subjects; nor can it be doubted that you have that knowledge, the best for all practical purposes, which would lead your Lordships to determinations intelligible to the people.

That I may not longer intrude on your Lordships, I bring this appeal to a close; unable however to pass over in silence one thing, which, if a sense of duty did not demand it, I should willingly omit.

It is not unknown to your Lordships, that some not confining themselves to that influence which their property and characters would

give them in the neighbourhoods in which they reside, (and which that it may long continue as one of the strongest and surest bonds of society every good subject must desire,) have, by means to which I will not more distinctly refer, attempted to extend their influence to many places not within their personal and immediate intercourse, but in remote and various parts of the kingdom; whereby an extensive influence is sought to be obtained in the Lower House of Parliament. That this is unconstitutional none can doubt, and that it should be discontinued, the integrity of our Constitution and the dignity of your House require. For never can the high station which your ennobled House ought to maintain in the State, be preserved, if it is to be united with an unconstitutional interference with the Election of the House of Commons.

That the people may look with confidence to the high-minded integrity of your Lordships for such correction of abuses as come within your power and the scope of your authority, I feel no hesitation in affirming; and it is with this thorough conviction, and with an earnest desire to urge nothing but what I conceive to be the truth, which I am confident cannot be unacceptable to your Lordships, I have ventured with all directness, but at the same time

with all respect, to lay before you this feeble attempt to illustrate some abuses which seem to exist, and to suggest such a remedy as appears to be easily attainable.

November 22nd, 1830.

TO

THE COMMONS IN PARLIAMENT ASSEMBLED.

Some reform in the constitution of your body, appears generally to be thought necessary. The violent and sanguine seek upon speculation and theory to advance much farther than the prudent can sanction. On the other hand, the timid and bigoted seem not inclined to advance so far as the occasion requires.

Alteration, and perhaps revolution, may be the object of one class; whilst a fixed adherence to things as they are, including the abuses which exist, is the unbending determination of another.

An attempt to take a due mean between these two extremes is justifiable; and common prudence requires that the cause of abuses should be ascertained, and a remedy provided for them, before

any discussion is entered upon, as to the excellence of our Constitution on the one hand; and its real nature, divested of all abuses, should be ascertained, before revolution or alteration is contemplated on the other.

That abuses exist, nobody can deny; that they are not few, must be admitted; that they are injurious, is self-evident.

That Old Sarum should return Members to Parliament; that large and increasing places should be excluded; that the right of representation should be deposited in the chests of the owners of Burgage-tenure Boroughs; that the municipal jurisdiction and authorities intended for the *public* good should be reduced to the possession of a few *individuals* for the purpose of Parliamentary influence; and that for the same object non-residents and honorary Freemen should be increased to an unlimited extent, are crying and oppressive evils.

Many of these have originated in decisions of your House, and its Committees, founded on error and mistake; and nothing is necessary to expose and correct those mistakes and errors, but a patient inquiry into the subject.

For instance, if the ancient practice of our Constitution is examined, it will be found that Old Sarum has actually ceased to be a Borough. The origin of the representation of Boroughs,

sprung out of their separation from the county at large: the increase of population in a particular spot rendering the common division of the county into hundreds and tithings inapplicable to a place so crowded: and hence the large towns were subdivided into wards, with their *elder* men, or *Aldermen*, presiding over them; by virtue of which separation from the county they had exclusive jurisdiction, and in consequence of the exercise of that jurisdiction within their limits, they were exempt from the interference of the Sheriff. They had themselves the return of all writs, and the Sheriff for that purpose could not enter their limits; from whence it followed, that neither could he call upon them to concur in the election of the Knights of the Shire, nor to contribute to the payment of their wages after they were elected. With respect to duty therefore, it was unreasonable they should be exempted from sending representatives to Parliament, or from paying their wages: and with respect to right, it was unreasonable that they should not be represented at all; therefore precepts were directed to them to return Members for themselves, and they were compelled to pay amongst themselves their expenses. Whenever this state of things ceased,—whenever the population was not sufficient, to require such a separation—whenever the exclusive jurisdiction was either not necessary or its exercise im-

practicable, it ceased, and the place was again re-absorbed into the county, and became subject to its jurisdiction. When it had not either electors to return Members, or persons fit to be returned; or the inhabitants were too poor to pay the Members, it ceased to send them; of which there are abundant instances in our history. Therefore Old Sarum having no person residing within it, and consequently no population to continue its separate jurisdiction, having no Court at all, nor inhabitants to elect or be elected, or to pay the Members' wages, its existence as a Borough is gone.

On the other hand, it is also established by many instances in our constitutional history, that as large towns grew up into importance, in some instances they had Charters granted to them, making them Boroughs; as the numerous places in Cornwall. And in other instances, having been previously Boroughs, but having ceased to return Members to Parliament, from poverty or depopulation, upon their reviving into importance again, precepts were issued to them to return Members without any further grant or Charter. Of this there are many precedents in the reign of Henry VIII., Queen Mary, and beginning of Elizabeth; and it seems that at this day it is the duty of the Sheriff, to send a precept, according to the writ, to any Borough

which has an exclusive jurisdiction, and has inhabitants enough to exercise it and elect Members to Parliament. This would be clear as to any place which is a Borough, and probably it would be a due exercise of the prerogative of the Crown, to grant, with the consent of parliament, a Charter to any large and populous place, making it a Borough, in consequence of which it would be the duty of the Sheriff to direct a precept to it.

The Burgage-tenure right of voting has been founded entirely in mistake; the chapter in Littleton which has been relied upon for its support, has been totally misapprehended and perverted from its proper application, which relates only to the nature of tenure of the entire Borough under the Crown or other Lord, and not to the tenure of particular individuals within the Borough.

The absurdity of this right of Election in any particular Borough is also apparent in this, that all Boroughs were originally held by Burgage tenure, and therefore it cannot be applicable to any particular place, but if the right of any, would be the right of all.

The truth is, that this mode of election has been adopted in a few places from the accidental circumstance only of the Court Leet and Court Baron being usually held together; the former grew gradually into desuetude, the latter being continued with more perseverance, owing to the profits and fees

accruing to the Lord and the steward; and consequently more pains were taken in recording the names as tenants, rather than in their character of resiants, in respect of which they owed their suit at the Court Leet.

In fact, they were identically the same class, though described by different names; for inasmuch as a resiant or inhabitant must have a house to live in, and he who lives in a house and occupies it must be the tenant, it follows that the tenant must be the inhabitant. And if the early cases supposed to have established Burgage-tenure be examined, it will be found, that they decide no more than that the Burgage-holders are the voters; which, as Burgage means a house, is in truth a description of householders, the most accurate term for defining the person really entitled to vote by the ancient Constitution in its purest day; namely, the inhabitant paying scot and lot, which necessarily is the householder.

Hence it appears that the supposed right of Burgage-tenure is founded in error and misconception; and thus by investigation it may be restored to its ancient purity.

All the abuses arising from the too limited and too extended number of corporators and of non-residents, are attributable to one error which has

been adopted by the House and Committees, that the right of election is in any respect a corporate right. I venture to call this an error, because it can be proved to be absolutely impossible. The greater proportion of Boroughs have returned Members from the close of the reign of Edward I. down to the present time. Though ecclesiastical and eleemosinary corporations and guilds (which latter were bodies separate and distinct from the Burgesses,) have existed from time immemorial; yet there were no municipal corporations in this country before 1440, the 18th of Henry VI., when the first Charter of Incorporation was granted to Kingston-upon-Hull. None of those which precede it on the Rolls have any words of incorporation; but that Charter contains nearly the same words of incorporation which are used to this day, and which had been before that time adopted in grants to ecclesiastical bodies, as abbeys, priories, convents, &c.; to eleemosinary bodies, as hospitals; and to guilds; but had not been applied to municipal bodies till the time of Henry VI. This fact can be proved without the chance of contradiction.

Municipal Corporations are neither mentioned in our Saxon laws, our oldest text authors, nor in the commencement of the Year-books, which are our earliest legal authorities. And the whole of our Corporation Law, up to the reign of Henry

IV. is solely and exclusively confined to the corporations I have before enumerated; a circumstance easily explained, because those bodies chiefly acted upon the civil law, from whence we borrow the rules and principles which we apply to Corporations; but which were not at that time of day adopted in our legal system, except for the limited purpose already mentioned.

About the time of Henry IV., although the inhabitants of many towns and other local districts had immemorially enjoyed privileges and grants without being incorporated, (as is abundantly established by Madox, in his Firma Burgi, on undoubted authorities and evidence,) yet the ecclesiastics, resting themselves upon the principles borrowed from the civil law, began to dispute the right of the lay municipal bodies to enjoy privileges interfering with their own, without their being duly incorporated. These discussions, it appears from the Year-books, continued for a long period, and at length produced, as I conceive, the Charter of Kingston to which I have before alluded.

It is a circumstance in confirmation of this view, though perhaps in itself apparently not important, that the word "Corporation" does not occur in the text of the Year-books, with respect to any municipal body, till long after the date to which we are referring; but as the Year-books were

printed at a considerable interval after the time when the cases which they report were decided, the word Corporation is often inserted in the margin with reference to Towns and Boroughs when it does not occur in the text; from which it is evident that the principles of Corporation Law were not applied to them till long after the cases were decided to which these marginal annotations are added.

It may therefore be assumed as a certain fact, that municipal corporations not existing till the reign of Henry VI. could not be connected with the right of representation, which began as early as the reign of Edward I. and was in continued practice afterwards.

This fact ought to be decisive upon the point. But in further confirmation, it may be added, that there are many incorporated places which do not return Members to Parliament; that many places return Members which are not incorporated; that there are others incorporated which return Members, but where the Corporators do not vote; and there are places also which have been incorporated, where the corporate officers have interfered in the election, the Corporators and the officers have ceased by the dissolution of the corporate body; and yet those places have continued to return Members to Parliament.

There is not therefore a point which can be

more clear, than that the return of Members to Parliament is in no respect a corporate act.

It may be asked—To what practical point does this position tend? To which the answer is, That all the evils resulting from the reduction of the number of corporators, the unlimited increase of them, and the introduction of non-residents, are attributable to this one erroneous assumption, that the right of returning Members to Parliament is in any degree founded on corporate privileges.

Because, in the first instance, the effect of so considering it is, that as Corporations can only be created by the Crown, the right of election is thus submitted to the power of the King, of which our ancestors would have been in no slight degree jealous.

The next consideration is, that the Charters of the Crown are to be enforced, and the abuses of them corrected, by the interposition of the courts of law; and therefore, for some time, acting upon the same mistaken principle, it was the practice of your House to insist that those who claimed corporate rights for themselves, or disputed those of others, should previously apply to a court of law to enforce the one or dispossess the other, before the House, or the Committees, would treat those rights as established or negatived. But this doctrine, which never could be supported or

suggested by any but those interested in its adoption, has of late years been most reasonably rejected by Committees; because it was absurd to say, that a man, who once in seven years is called upon to discharge a public duty by voting for Members of Parliament, should previously incur the ruinous expense of proceedings in a court of law to assert his own right, or negative that of his neighbour. And therefore, as long as such a principle was acted upon by Committees of the House of Commons, few usurpations were corrected, and they would have been rarely assailed to the present day, had not that error been abandoned.

A farther consideration, and perhaps the most important, is that the courts of law have assumed, that every Corporation has a power of perpetuating its own body, and of selecting such persons as they think fit for that purpose. This is the great master-evil of this system; and by it Corporations are enabled on the one hand to reduce their bodies to the smallest possible number, or, on the other, to increase them to the most unlimited extent.

I have ventured to say that the Courts of Law have in this respect proceeded upon erroneous grounds, and, with all respect for those high tribunals, I presume to affirm that nothing is more unfounded or more gratuitously assumed than this arbitrary right of election. There is no

pretence for it in the general principles of our Law—there is no real ground for it in the Charters. There is a manifest absurdity in the application of it, and it gives to a few members of Corporations an uncontrolled power, which, if carried to its full extent, would be too powerful for the Crown, for your House, or the people.

This principle was first adopted in the Courts of Law, in the Nottingham case, in the year 1811, when it was decided that such a power necessarily existed in a Corporation, on the authority of a case from the Year-books, which does not in my humble opinion in any degree support it.

In the Nottingham case there was a general Incorporation, under which certain persons were presumed to have a right to be admitted as members; and the Court decided, that as those persons who were so entitled to be admitted, might not be sufficiently numerous to continue the Corporation, it must necessarily be inferred, that the Crown intended to give a power of perpetuating it by discretionary election.

Surely the obvious conclusion would be, that if the King created a Corporation to be continued from time to time, by the successive introduction of persons having certain qualifications, that when they ceased, the Corporations also should be at an end; there is no reason whatever for inferring that the King intended that the corporation should

continue beyond the successive duration of those persons to whom he granted it.

The ancient case upon the authority of which the Court of King's Bench decided, was to this effect:—the King having granted a Charter, by which he directed that there should be a specified number of aldermen, further provided, that in case any of that number should die, the Corporation should elect another in his stead within eight days. They omitted to do so within that period; the question then arose, whether they might afterwards elect an alderman: and it was decided they might: because the King had directed that they should have twelve aldermen: and although they had not elected within the specified time, that might be considered as merely directory, and they might proceed to the election afterwards; for the King clearly intended they should have twelve aldermen, and that intention would be defeated if they did not so elect.

What analogy has this to the case of Nottingham? The King had only incorporated those who had certain qualifications, and when these ceased why should the Corporation continue? The intention of the King was effected; why should another class be gratuitously introduced?

Properly considered there is no analogy between these cases. The Nottingham case therefore being founded upon the former, but being

in truth not supported by it, is not maintainable; and consequently I venture to repeat the assertion, that this arbitrary power of selection by Corporations, as it is not sanctioned by the Common or Statute Law, nor supported by authority or Charter, is totally untenable.

The supposed right of the non-residents is also founded upon mistake.

In the early period of our history, there is no doubt that the Burgesses ought all to have been resident; and nothing appears to have encroached upon that general rule, but that at the time when the wages of the Members were paid by the constituents, and those wages were considerably increased, according to the distance of the place at which the Parliament was held, it became a practice of the Burgesses, when the distance was great, to find some person at or near the place who would undertake the office for them; and in order to make such person apparently within the requisition of the writ for the return of Members, they were wont to admit him as a Burgess of their place, and so to comply with the exigency of the writ.

Again in 1660, when under the Statute of the 13th of Charles II. many persons were displaced from the Corporations, the principal Officers of State at that time were admitted into them throughout the greater part of the kingdom. This

was another circumstance which afforded a precedent for the admission of non-residents.

After this, in order to justify an usurpation which had sprung out of such indefensible transactions, it began to be contended that a person who was once free continued always free; which is true, if it is simply referred to a person being of free condition; but erroneous, if it is intended to infer from it, that a person who was a free inhabitant of a particular place, should, when he quitted it and transferred himself to another, continue to be a freeman of the former.

Upon this mistaken notion, however, at the close of the seventeenth or beginning of the eighteenth century, the non-residents were in some few instances allowed to vote; but whatever plausible grounds might have been suggested in any particular place for their adoption, there is no doubt that, were the history of all Boroughs accurately investigated, not only would the non-residents be found to be disqualified, but all the residents and inhabitants entitled.

Such are the abuses which the Committees of your Honourable House would be enabled to correct, through the administration of judicial functions under the modern acts, which have established upon a permanent footing the jurisdiction of the Committees.

But the probability is, that the House will be

called upon to entertain new legislative provisions upon this subject.

Before this adventurous course is entered upon, the humble individual who addresses you, ventures to suggest the utmost care should be taken to ascertain whether a recurrence to the ancient practice would not suffice, before new speculations are adopted: and without indulging in unfounded complaints, we may appeal to the experience of the past to satisfy us, that the success of modern legislative enactments holds out no strong inducement needlessly to resort to new provisions.

The wisdom of man cannot anticipate the future with sufficient precision, to justify him in unnecessarily supplanting that which the experience of ages has established, in order to introduce the crude enactments which a speculative guess at future contingencies may suggest.

Depend upon it, therefore, that you will risk the safety and security of the constitution and the public good, if you adopt speculative suggestions instead of undoing that which has already been improvidently done, and correcting the abuses which have sprung out of the indiscreet and inconsiderate interposition of the Legislature.

Be assured, that our old institutions will be your best guide; resort to them, and they will sweep away, as it were with giant force, the in-

tricate, discordant, anomalous system which has sprung up from successive usurpations and gradual aberrations from the simple system of our forefathers. And in the progress of your investigation of the past, you will find evolved, instead of the present complicated system, which is intelligible to none—serviceable to none but those who wish to continue the whole in mystery for the purpose of their own private advantage—a system so plain, so simple, so universal, that it would be beneficial and intelligible to all, and would admit, at least for a great length of time to come, of no intricacy or perversion.

The first writs which were issued in the close of the reign of Edward I. directed that Citizens should be returned for *every* City, and Burgesses for *every* Borough, which of itself would raise the inference that they were all of the same class and description. Besides, an inspection of their Charters will establish that in fact they were so. For although they may vary in some slight degree in their language, in their import and substance they are all the same. Again, none of the early Charters define who were the Citizens or Burgesses; because they were sufficiently denoted by the Common Law.

It will be the province of this attempt to show who they were by the Common Law, and who they are proved to be by the practice

down to the present day; although that practice is much misunderstood, and the facts have been perverted in a manner almost incredible; particularly when it is considered that this has been done under the authority of legal decisions.

All our early Law text writers commence with the division of society into two classes, the Freemen and Villains. Our early statutes record the same division. And in the Year-books, the same distinction is preserved. Numerous are the writs, the proceedings, cases, and determinations, which are founded upon the relative rights of Freemen, the Lords, and their Villains. The result of this state of society was that the Lords were responsible for their Villains, and absorbed in themselves all their public rights and duties.

The *Freemen* were those only who enjoyed any public rights, and were consequently called on to perform all public duties; these Freemen were bound by oath to the King to abide by the Laws; that oath which commenced in our Saxon Institutions, and has been continued to the present moment, and is emphatically and properly called the Oath of Allegiance.

Every *free* inhabitant in the country so sworn was, in the language of the law, "*Law-worthy;*" and hence it is, that in early periods we find all the public duties discharged, the public offices filled, the Law administered, and questions be-

tween man and man decided, by the "*liberi et legales homines.*" The next point to be considered, is how these Freemen were ascertained:—some were free by birth, as born of free parents—some were made free by marriage, as marrying a free woman, by consent of the Lord, express or implied—others were made free by living away from the Lord for a year and a day without his claim or control. These are the rights of birth, marriage, and servitude, acted upon to this very day, but most mistakenly and absurdly applied to Corporations, with which they have no affinity whatever; and not attributed, as they ought to be, to the earliest principles of our Common Law.

The right of servitude is stated above to be connected with absence from the Lord for a year and a day. This may require a few words in explanation. That a Villain who lived away from his Lord for a year and a day without claim, was thereby free, is laid down by all our early writers. A Villain could not enter into a contract with his Lord; if, therefore, a person entered into a contract with another, it was evident that he was not his Villain. Consequently, if he served any one under a contract for more than a year and a day, inasmuch as the individual with whom he served was proved not to be his Lord, it was clear that he could not be the Villain of any one; for if he had a Lord, he had lived more than a year and a day

away from him. Hence an apprentice who had served seven years, was clearly proved to be free, and was entitled to be so considered. And even a servant, though not an apprentice, if he had served for a year and a day, would be free, of which instances may be found.

Thus it may be clearly established, that the right by apprenticeship, so constantly supposed to have reference to corporate rights, has nothing to do with them; but is, like the rest, founded upon the Common Law; of which a further confirmation might be obtained, if necessary, from the fact, that there are instances of there being Freemen sworn at a Court Leet, in a Borough in which there is no pretence for saying that a Corporation ever existed.

And as the service of seven years is usually required, it is a curious coincidence that although no time is fixed by the English Law, during which a Lord might reclaim his Villain under the writ *de nativo replegiando*, by the Leges Burgorum it appears that after seven years the Villain was absolutely irreclaimable.

Such being the rights of Freemen, the next question is, *Where* were those rights to be enjoyed?

A free inhabitant of a county took his oath of allegiance at the Sheriff's Tourn; did his suit and service there; and until the Statute of 8th Henry VI. voted for Knights of the Shire. The num-

ber of such persons dwelling in the Counties becoming unmanageably great, it was enacted that the Knights should be elected by people dwelling in the County, having free land and tenement of the value of forty shillings a year, and excluding all who could not expend that sum annually: not altering the class of persons who were to vote for Counties, (viz. the inhabitants and dwellers there,) but only restraining the right of Election to that portion of them who had *free* land to the annual value of forty shillings.

Within the circuit of the Counties there were many places which had exclusive jurisdiction, Courts Leet, View of Frankpledge, the Return of Writs, and the Exemption from Suits of Shires. At the Courts Leet the inhabitants within those districts took the same oath of allegiance which the inhabitants of the County did at the Tourn of the Sheriff. As the privileged places had the Return of Writs, the Sheriff could not interpose there, nor did the inhabitants within them vote for the Knights of the Shire, or contribute to their expenses, and therefore, as has been stated before, the Sheriff directed his precepts to the King's officer at those places, whether Reeve, Provost, Mayor, Bailiff, or Constable, to return the Citizens or Burgesses; and the same officers had afterwards to assess upon the inhabitants the wages due to the Members.

Such was originally the class of persons who were the Burgesses, and nothing has ever since occurred to alter them, except as far as Charters of Incorporation have been erroneously supposed to have that effect.

It has been already stated, that no Municipal Corporations existed before the reign of Henry VI.: and therefore, as it is the clear Law of Parliament, that a right of Election once vested in any class of persons cannot be afterwards altered but by an act of the Legislature, it is evident that the right which had been exercised in most Boroughs long before that period, cannot be affected by any Charter subsequently granted ; and it is also clear that, even on this ground, Corporations can have nothing to do with the right of Election. But in truth the Corporate character has, since the time of Henry VI., been superinduced upon the previous character of Burgess, which simply meant the free inhabitant of a Borough, according to the Common Law ; of which a more convincing proof cannot exist, than that according to the modern technical language applied to Corporations, the "*inchoate rights*" now insisted upon, and the swearing of freemen now practised, are all easily referable (as shown before) to the Common Law ; and an unhesitating challenge may be given for the suggestion of any hypothesis by which they can be connected with Corporations.

The rules by which a person who was free, became the acknowledged inhabitant of any particular place, could also be sufficiently explained from the earliest periods of our Common Law, upon principles which are still in every day's practice, for the purpose of ascertaining the proper place of residence of poor people, (in technical language called the *settlement of the poor*,) depending upon forty days' inhabitancy, birth, service for a year, marriage, apprenticeship, holding a tenement, (originally, no doubt, a house,) or possessing real property at the place. By further explanation these might be fully developed, were it not too tedious for the present occasion.

The plain result of the whole would suggest a comprehensive though simple mode of reform, which if not sufficiently extensive to satisfy the most sanguine, and perhaps too enlarged to be altogether acceptable to the timid, might yet upon a conviction that it is what our original constitution warrants, content them both.

The effect will be this:—In counties the right will be confined to the resident freeholders, by which the expense of taking non-residents to the poll will be cut off. The poll will be shortened,—the representation will assume more of a local character,—and men of integrity, respectability, and talent, though of small fortunes, may be

enabled, without inevitable ruin, to offer themselves as candidates.

The number of voters for Counties will also be lessened by excluding persons resident in Boroughs. This is but reasonable, and was the ancient practice of our Constitution, which ought now to be enforced to obviate the present disproportionate influence the Boroughs have in County Elections.

In Boroughs, every inhabitant householder had uniformly throughout the kingdom the right of voting, and the public rates would, as a necessary consequence of their being householders, denote to the electors, as well as the candidates, the persons entitled to vote at the election.

And as all inhabitants would be included in the right, so as a consequence all non-residents would be excluded; by which the enormous expense attending their transport would be avoided, and their undue control of the elections be prevented. Thus would one uniform system prevail throughout the country, intelligible both to the electors and candidates, who might then carry on the election without the aid of those innumerable and expensive agents who are now rendered indispensably necessary by the present complicated and mysterious rights of election.

With the most unhesitating confidence, I assert that if the collective history of Counties, Cities,

and Boroughs, is patiently and dispassionately investigated, this will be found to be the real ancient right of election, and which has been broken in upon by nothing but abuse and usurpation.

But it will be asked, what then stands in the way of this plain and useful reform?—Only two provisions of the Legislature, which upon dispassionate consideration cannot, in my opinion, be supported by reason or principle. By the clear unequivocal provisions of the statute of the 1st of Henry V., the choosers of Knights of the Shire were commanded to reside in the county, and those of Cities and Boroughs to be free and resiant within them, and that continued to be the law till the 14th Geo. III. 1774; when, by a most extraordinary and unprecedented recital of the Legislature, the former Act of Parliament was declared "by long usage to be unnecessary, and "to have become obsolete." A declaration certainly not to be supported by any principle of Law, and it cannot be unwise to remove from the Statute Book so extraordinary an assertion—and to repeal the statute founded upon it.

The other provision of the Legislature which requires repeal, is that clause which has made the last determination final.

This was, first, merely a Resolution of the House, after which the substance of that Resolution was strangely introduced into the Bribery Act; and

subsequently, it was included with some modifications in the Grenville Act, and the later statutes which have amended it.

But surely this clause cannot be supported by reason or principle. Was there any investigation preceding it, to establish the ground upon which alone it could be justifiable—namely, that the rights which had been established were correctly determined? Certainly not: but the Resolution was made and adopted in the dark, in total ignorance of what had passed before, and without investigation of what were the real rights.—What is the consequence?—If there were erroneous determinations, those errors were perpetuated; that there were such decisions no person can doubt; for notwithstanding all the rights of Election were originally the same, they are now almost as numerous as the places, and every possible variety, contradiction, and anomaly, exist in the different determinations.

For instance, in Boroughs which were clearly held by Burgage-tenure, Corporate rights of Election now prevail; in some Corporations, scot-and-lot payers vote; in others, the select bodies; in others, under precepts directing that the return should be by Burgesses, Freemen vote. In other Corporations Freeholders unite with the Freemen. In some, residents only vote; and

in others non-residents; and on two Charters identically the same, granted by the same Queen, in the same reign, and on the same day, two different rights of Election are established.

It is monstrous to perpetuate a system so contradictory and anomalous by such a sweeping enactment; and reason and necessity will sooner or later require the repeal of it. One obvious objection to it is that the last determination is often made conclusive upon those who were not parties to it, as when the right is established by the acquiescence of the candidates, and it is afterwards used to bind the voters.

The plausible pretext upon which the Resolution was originally founded, and is still maintained, that of quieting possession and confirming usages, falls to the ground before the overpowering influence of truth.

Such possession, such usages, ought not to be supported: and the strongest practical argument against this doctrine, so conducive to the propagation of error and the protection of usurpation, is, that it has produced this monstrous and discordant system. And such must ever be the effect of the doctrine which supports usage not founded on right. Hence it is, that some years ago, when a case was brought before the Court, in which there was the most decisive proof that the Burgesses had been the inhabitants and

resiants sworn at the Court Leet, an application on the behalf of the inhabitants to swear them as Burgesses according to the old practice, was refused by the Court, on the gratuitous assumptions that their admission was a Corporate act, and that it had no connexion with the Court Leet: although it has before been shown by irresistible facts, that the admission and swearing of Burgesses was clearly the province of that Court; and that the Incorporation of the Inhabitants was introduced in later times by subsequent Charters, which in that particular case was most conspicuous, particularly as it was an incorporation of the Inhabitants who were before the Burgesses.

Again, in order to support the usage of non-resident capital Burgesses, a *mandamus* was refused by the Court to fill up their vacancies, although the Charter expressly provided, that upon a capital Burgess dying, departing from the town, or being removed, another should be elected in his stead; the Charter further adding, that the successor was to be elected into the place of the person so dying and removed; omitting in that part of the clause which described the vacancy, the other contingency of the capital Burgess departing out of the town. This was considered as making the Charter too ambiguous for the Court to proceed upon, or rather, in the words of the Court, "not so unambi-

guous as that the Court would act upon it." But surely, with submission to the Court, this part of the clause was totally immaterial, and might be rejected as surplusage; and at all events, the former essential part of the clause, which was clear, should not be defeated on the ground of the supposed obscurity of the other immaterial part of it, for "utile per inutile non vitiatur." And the clear object and intention of the clause was, that the capital Burgesses should be resident. If it were necessary, surely the word "*removal*" might be construed as descriptive both of a removal by the party himself out of the town, and of a removal by the Corporation. In which case, the manifest intention of the Charter would have been supported: but by the above construction that intention was defeated.

In a still later case also, in which Toll was demanded by a select body of a Corporation consisting of about thirty, when the population amounted to 60,000, and the words of the Charter, which was granted for the express purpose of removing all doubts and ambiguities, provided that the Burgesses *and Inhabitants* should be free of Toll, it was held, in order to support the payment of the Toll, which was proved to have been acquiesced in by the inhabitants as far back as living testimony could go, that the words did not include *Inhabitants* in the exemption; and

although the learned Judge who tried the cause reserved the point for consideration, it was not thought necessary for the matter to be further investigated. The grounds stated for the refusal were, that the exemption was originally granted to the tenants holding in and of the Town, and their *heirs*, which it was said could not mean the Inhabitants; but surely no term is so likely to mean the Inhabitants, as that which was most accurately applicable to every householder in the place: for they must "*hold in and of* the town."

Again it was said, that the word *heirs* could not be applicable to Inhabitants; but every Charter granted before the reign of Edward II. was granted to the men, and tenants, and Burgesses of the places and their *heirs:* and antiquarians allow, that those terms did at that period apply to Inhabitants.

However, even supposing that these terms were not generally applicable to Inhabitants, when a subsequent Charter, in order to remove all doubts, actually introduces the very term "Inhabitants," it seems to be opposition to the principle, that *usage cannot alter the words of a Charter*, to hold that the word "*Inhabitants*" does not include Inhabitants.

Surely this is allowing the doctrine of usage to prevail too far; and more particularly when it is considered that these are public rights.

The Parliamentary right of Election is certainly of that description; and it is as contrary to the principle of the Law, that no usage shall prevail against the public, as it is revolting to our own feelings, knowledge, experience, and reason, to say that usage as to the right of Election ought to be of the slightest avail, where any reasonable evidence can be given that it is founded in usurpation.

Because we know that, generally speaking, this right is to be exercised only once in six or seven years, except on accidental contingencies; and that the person who exercises it is often indifferent as to his right till the Election arrives, and then should his vote be rejected, or the votes of others be unduly received, he has no remedy but by the enormously expensive process of a petition to Parliament; or the almost equally expensive and more precarious issue of a law-suit for refusing his vote, in which if he should fail to prove malice, he would fail altogether and have to pay the costs of the person who had injured him.

Who, under such circumstances can doubt that usage ought not to be of any weight, if opposed by even the slightest evidence? and what is so well known as, that if a small united body in a Borough once get the power into their hands, and are determined to exercise it, centuries

may pass away before they are disturbed in their unjust possession?

The commencement, the progress, and the continuance of the present usurpations, might here be easily traced, if time and space allowed; but already has this appeal extended to too great a length.

It should however be observed, that usage is not to be altogether disregarded; far from it, for in doubtful matters and in questions between private individuals as to private rights it ought to prevail.

But wherever a fair presumption is raised, that in point of fact it is usurpation, the usage then amounts to nothing, being no more than a presumption which is rebutted.

This provision therefore (which ought not to stand) being removed, the successive decisions of Committees would gradually correct these discordant rights.

But should the House in its wisdom consider (and it would be most wise so to do), that these matters would be more fully and certainly investigated if viewed collectively than when taken in detail, and that the work of restoration may more satisfactorily, promptly, and generally be effected by an inquiry into the whole, a Committee of the House, formed of its best and ablest Members, for the purpose of investigating the general history of Cities and Boroughs, would

no doubt lead to a well-founded result, be satisfactory to the people, and consistent with the dignity, honour, and integrity of the House.

This is probably all that reform would require, unless it might be thought expedient under some modifications to secure by a new enactment, to the present voters, the right they are at present exercising. And that some provision should be made for defining the sum at which every person who claims to vote as an inhabitant householder should be rated.

A sense of duty has suggested this appeal. Truth and facts have been intended to be its basis; zeal for the welfare of his country has stimulated the writer's endeavours, and a fervent prayer that your Honourable House may arrive at a conclusion, which shall perpetuate our invaluable Constitution, shall close his humble labour.

November 22*nd*, 1830.

THE END.

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